
A BILL FOR AN ACT

RELATING TO THE HILO COMMUNITY ECONOMIC DISTRICT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Act 149, Session
2 Laws of Hawaii 2018 (Act 149), which was eventually codified as
3 part X of chapter 171, Hawaii Revised Statutes, established a
4 ten-year pilot project to authorize the board of land and
5 natural resources to extend leases of public lands in the Hilo
6 community economic district for the purpose of facilitating
7 improvement and economic opportunity in the area for lessees who
8 commit to making substantial improvements to the existing
9 improvements or constructing new substantial improvements. The
10 legislature further finds that the Hilo community economic
11 district contains numerous dilapidated structures that need
12 major renovations and the investment of significant amounts of
13 capital. In light of the pressing need for extensive
14 improvements and renovations, it is the intent of the
15 legislature to require any lease of public lands within the Hilo
16 community economic district that is in the process of being
17 extended or modified pursuant to part X of chapter 171, Hawaii



1 Revised Statutes, as of the effective date of this Act to
2 continue to be processed to conform to the board of land and
3 natural resources' most current lease form and leasing practices
4 and policies, and to not be held, paused, or tolled, regardless
5 of whether the lease form and leasing practices and policies
6 have not yet been included in, or are in the process of being
7 included in, the rules of the board governing the extension of
8 leases of public lands.

9 In extending the lease of public lands in the Hilo
10 community economic district, Act 149 authorized the board of
11 land and natural resources to:

- 12 (1) Modify or eliminate any of the restrictions specified
13 in section 171-36(a), Hawaii Revised Statutes;
- 14 (2) Extend or modify the fixed rental period or the term
15 of the lease; provided that the board of land and
16 natural resources approves a development agreement
17 proposed by a lessee to make substantial improvements
18 to the existing improvements or to construct new
19 substantial improvements, so long as the extension
20 does not extend the original lease term by more than
21 forty years; or



1 (3) Extend the term and modify any provisions of the
2 lease, to the extent necessary to meet the
3 requirements of a lender or to amortize the cost of
4 the substantial improvements that will be paid for by
5 the lessee without institutional financing.

6 Noticeably missing from Act 149 is language that expressly
7 allows the board of land and natural resources to unilaterally
8 amend any terms and conditions of the extended lease to conform
9 to the most current lease form and leasing practices and
10 policies of the board of land and natural resources. The
11 legislature finds this to be in stark contrast to Act 219,
12 Session Laws of Hawaii 2011 (Act 219), which was a similar
13 measure that authorized the board of land and natural resources
14 to extend hotel or resort leases for lessees who commit to
15 substantial improvement to the existing improvements and
16 contained specific language requiring any extension of a lease
17 granted under the measure to be executed using the most current
18 lease form and leasing practices and policies of the board of
19 land and natural resources.

20 The legislature also finds that Act 149 allows the board of
21 land and natural resources to subject its approval of lease



1 extensions to additional terms and conditions; provided that
2 such terms and conditions must be set in the rules adopted by
3 the board. However, the legislature finds that, to date, the
4 board of land and natural resources has not adopted any rules
5 governing the extension of leases of public lands under Act 149
6 or any other lease extensions permitted under chapter 171,
7 Hawaii Revised Statutes.

8 The legislature further finds that despite the foregoing,
9 the board of land and natural resources has been approving
10 extensions of leases pursuant to Act 149 by amending the lease
11 terms and conditions to conform to the board's most current
12 lease form and leasing practices and policies.

13 Accordingly, the purpose of this Act is to clarify that:

- 14 (1) The board of land and natural resources shall not
15 unilaterally amend the terms and conditions of any
16 lease of public lands being extended pursuant to Act
17 149, codified as part X of chapter 171, Hawaii Revised
18 Statutes, except as otherwise provided therein; and
19 (2) If the board of land and natural resources wishes to
20 amend the terms and conditions of any lease of public
21 lands being extended pursuant to part X of chapter



1 171, Hawaii Revised Statutes, to reflect the board's
 2 most current lease form and leasing practices and
 3 policies, such lease form and leasing practices and
 4 policies must be included in the rules of the board
 5 governing the extension of leases pursuant to part X
 6 of chapter 171, Hawaii Revised Statutes, adopted by
 7 the board in accordance with chapter 91, Hawaii
 8 Revised Statutes.

9 SECTION 2. Section 171-192, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "[~~§~~171-192~~§~~] **Lease restrictions.** (a) The board, from
 12 time to time, upon the issuance or during the term of any
 13 intensive agricultural, aquaculture, commercial, mariculture,
 14 special livestock, pasture, hotel, resort, or industrial lease
 15 of public lands within the Hilo community economic district,
 16 may:

- 17 (1) Modify or eliminate any of the restrictions specified
- 18 in section 171-36(a);
- 19 (2) Extend or modify the fixed rental period or the term
- 20 of the lease upon approval by the board of a
- 21 development agreement proposed by the lessee to make



1 substantial improvements to the existing improvements
2 or to construct new substantial improvements so long
3 as the length of any extension granted does not extend
4 the original lease term by more than forty years; or

5 (3) Extend the term and modify any provisions of the
6 lease,

7 to the extent necessary to qualify the lease for mortgage
8 lending or guaranty purposes with any federal mortgage lending
9 agency; to qualify the lessee for any state or private lending
10 institution loan, private loan guaranteed by the State, or any
11 loan in which the State and any private lender participates; or
12 to amortize the cost of substantial improvements to the demised
13 premises that are paid for by the lessee without institutional
14 financing.

15 (b) Prior to entering into a development agreement, the
16 lessee or the lessee and developer shall submit to the board the
17 plans and specifications for the total development being
18 proposed. The board shall review the plans and specifications
19 and, in determining whether to approve the development agreement
20 pursuant to subsection (a) (2), consider:



1 (1) Whether the development proposed in the development
2 agreement is of sufficient worth and value to justify
3 the extension of the lease;

4 (2) The estimated period of time to complete the
5 improvements and expected date of completion of the
6 improvements; and

7 (3) The minimum revised annual rent based on the fair
8 market value of the lands to be developed, as
9 determined by an appraiser for the board, and the
10 percentage of rent where gross receipts exceed a
11 specified amount.

12 (c) An extension of the fixed rental period or term of the
13 lease shall be based on the economic life of the substantial
14 improvements as determined by the board or an independent
15 appraiser; provided that the approval of any extension shall be
16 subject to the following:

17 (1) The demised premises have been used substantially for
18 the purpose for which they were originally leased;

19 (2) The length of any extension granted for the fixed
20 rental period of the lease shall not extend the fixed



- 1 rental period of the original lease by more than forty
2 years;
- 3 (3) The length of any extension granted for the term of
4 the lease shall not extend the original lease term by
5 more than forty years;
- 6 (4) If a reopening occurs, the rental for any ensuing
7 period shall be the fair market rental as determined
8 under section 171-17(d) at the time of reopening;
- 9 (5) Any federal or private lending institution shall be
10 qualified to do business in the State;
- 11 (6) Proceeds of any mortgage or loan shall be used solely
12 for the operations or substantial improvements on the
13 demised premises;
- 14 (7) Where substantial improvements are financed by the
15 lessee, the lessee shall submit receipts of
16 expenditures within a time period specified by the
17 board, otherwise the lease extension shall be
18 canceled; and
- 19 (8) The ~~[rules of]~~ most current lease form and leasing
20 practices and policies of the board~~[, setting forth~~
21 ~~any additional terms and conditions, which shall~~



1 ~~ensure~~]; provided that the lease form and leasing
2 practices and policies shall:

3 (A) Ensure and promote the purposes of the demised
4 lands~~[-]~~; and

5 (B) Be included in the rules of the board governing
6 the extension of leases of public lands pursuant
7 to this part or this chapter, adopted by the
8 board in accordance with chapter 91.

9 (d) The board, from time to time, during the term of any
10 agriculture, intensive agriculture, aquaculture, commercial,
11 mariculture, special livestock, pasture, hotel, resort, or
12 industrial lease of public lands within the Hilo community
13 economic district, may modify or eliminate any of the
14 restrictions specified in section 171-36(a), extend or modify
15 the fixed rental period of the lease, or extend the term of the
16 lease upon a showing of significant economic hardship directly
17 caused by:

18 (1) State disaster, pursuant to chapter 209, including
19 seismic or tidal wave, tsunami, hurricane, volcanic
20 eruption, typhoon, earthquake, flood, or severe
21 drought; or



1 (2) A taking of a portion of the area of the lease by
2 government action by eminent domain, withdrawal, or
3 conservation easement; provided that the portion taken
4 shall not be less than ten per cent of the entire
5 leased area unless otherwise approved by the board;
6 provided that the board determines that the lessee
7 will not be adequately compensated pursuant to the
8 lease provisions.

9 (e) The approval of any extension granted pursuant to
10 subsection (d) shall be subject to the following:

11 (1) The demised premises has been used substantially for
12 the purposes for which they were originally leased;

13 (2) The rental shall not be less than the rental for the
14 preceding term;

15 (3) The ~~[rules of]~~ most current lease form and leasing
16 practices and policies of the board~~[, setting forth~~
17 ~~any additional terms and conditions which shall~~
18 ensure]; provided that the lease form and leasing
19 practices and policies shall:

20 (A) Ensure and promote the purposes of the demised
21 lands; and



1 (B) Be included in the rules of the board governing
2 the extension of leases of public lands pursuant
3 to this part or this chapter, adopted by the
4 board in accordance with chapter 91; and

5 (4) The length of the extension shall not exceed a
6 reasonable length of time for the purpose of providing
7 relief and shall in no case extend the original
8 lease's fixed rental period by more than forty years.

9 (f) The applicant for any lease extension pursuant to this
10 section shall pay all costs and expenses incurred by the
11 department in connection with the processing, analyzing, and
12 negotiating of any lease extension request and document and of
13 the development agreement under subsections (a) and (b).

14 (g) Except as otherwise provided in this section, the
15 board shall not unilaterally amend the terms and conditions of
16 any lease of public lands being extended pursuant to this part.

17 (h) As used in this section, "lease of public lands"
18 includes leases entered into through direct negotiation without
19 public auction and leases granted at public auction."



1 SECTION 3. (a) This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 (b) Any lease of public lands within the Hilo community
5 economic district that is in the process of being extended or
6 modified pursuant to part X of chapter 171, Hawaii Revised
7 Statutes, as of the effective date of this Act shall continue to
8 be processed to conform to the board of land and natural
9 resources' most current lease form and leasing practices and
10 policies, and shall not be held, paused, or tolled, regardless
11 of whether the lease form and leasing practices and policies
12 have not yet been included in, or are in the process of being
13 included in, the rules of the board governing the extension of
14 leases of public lands pursuant to part X of chapter 171, Hawaii
15 Revised Statutes, or chapter 171, Hawaii Revised Statutes.

16 SECTION 4. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect on July 1, 3000, and
19 shall be repealed on June 30, 2028.



Report Title:

Hilo Community Economic District; Lease Extension; Department of Land and Natural Resources; Board of Land and Natural Resources

Description:

Clarifies that the Board of Land and Natural Resources shall not unilaterally amend the terms and conditions of any lease of public lands being extended pursuant to Act 149, Session Laws of Hawaii 2018, except as otherwise provided therein; and if the Board of Land and Natural Resources wishes to amend the terms and conditions of any lease of public lands being extended to reflect the Board's most current lease form and leasing practices and policies, such lease form and leasing practices and policies must be included in the rules of the Board. Defines "lease of public lands". Repeals 6/30/2028. Effective 7/1/3000. (HD1)

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